



CITY OF MANCHESTER,
NEW HAMPSHIRE

Procurement Code

With Revisions and As Adopted 05/03/2005

*As excerpted from City of Manchester Code of Ordinances,
Title III, Section 39*

Section

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§39.01

PURPOSE.

(A) The Procurement Code shall promote fair and equitable treatment to all suppliers or prospective suppliers of goods and services, promote effective competition among prospective suppliers of goods and services, make as uniform as possible the procedures among various departments and agencies of the City by the standardization of the procurement process, to prevent abuses and favoritism, and promote the economical, effective, and efficient use of the City's total resources.

(B) The purpose of the Procurement Code is to provide to the Purchasing Agency flexibility and defined guidelines for the purchasing of goods and services. These guidelines define maximum allowed procurement limits. The Purchasing Agency has the flexibility to reduce these limits in order to insure that the best interest of the City is being served. Any questions relating to this Procurement Code should be addressed in writing to the City Solicitor and/or the Finance Officer. The Purchasing Agency will at all times retain adequate records, based on the size of the procurement, as to the type of procurement utilized and the basis of award.

§39.02

APPLICATION OF PROVISIONS.

(A) This code applies to every expenditure of public dollars irrespective of their source, including federal assistance dollars, for the procurement of materials, supplies, services and construction. Nothing in this code shall prevent the City from complying with the terms and conditions of any grant, gift, bequest or cooperative agreements. Procurement actions involving Federal or State funding shall comply with their mandatory rules that may not be reflected in this procurement code.

(B) The following procurement actions are not subject to this code:

- (1) Intergovernmental Agreements.
- (2) Agreements negotiated by the Risk Manager or City Solicitor for the settlement of litigation or threatened litigation.
- (3) Contracts awarded for professional witnesses for the purpose of providing testimony relating to existing or probable judicial proceedings.
- (4) Contracts awarded for real property transactions.
- (5) Other specific procurement actions based on recommendation of the Chief Executive Officer and approval by the Board of Mayor and Aldermen.

§39.03

DEFINITIONS.

AMENDMENT is a mechanism by which parties can agree to modify, delete or add to the original scope of work, terms and conditions of a contract. Typically, amendments are used to modify contracts for professional services and/or to modify contracts for the furnishing of materials and services.

ADVANTAGEOUS means in the best interest of the City.

AUDITOR means the City of Manchester's Auditor.

BRAND NAME or **EQUAL SPECIFICATION** means a specification using one or more manufacturer's names or catalog numbers to describe the standard of quality, performance and other characteristics to meet City requirements.

BRAND NAME SPECIFICATION means a specification limited to one or more items by a manufacturer's name or catalog numbers.

CHANGE ORDER means a written order signed by an authorized agent of the City and by the contractor authorizing an addition, deletion, or a revision in work or an adjustment in the contract price or contract time, issued on or after the effective date of the contract, as provided for in the original contract. Typically, change orders are used to modify construction contracts.

CHIEF EXECUTIVE OFFICER means the Mayor of the City of Manchester.

CITY means the City of Manchester, NH.

CONSTRUCTION means the process of building, altering, repairing, improving or demolishing any public structure or building, or other public improvements of any kind to public real property or any public infrastructure.

CONSTRUCTION MANAGEMENT means a project delivery method that provides a comprehensive array of management and/or consulting services spanning all phases of the design and construction process from conception to completion of the construction project.

CONTRACT means all types of City agreements, regardless of what they may be called for the procurement of materials, supplies, services and Purchase Orders shall be used as the contract for procurement of materials and supplies. Formal written agreements shall be used for the procurement of services, construction and complex actions.

CONTRACTOR means any person or firm who has a contract with the City.

DEBARMENT means an action taken by the City, under the provisions of this code, to prohibit a person from participating in City procurements.

DESIGN REQUIREMENTS means the written description of the infrastructure facility or service to be procured, including: (1) required features, functions, characteristics, qualities, and properties that are required; (2) the anticipated schedule, including start, duration, and completion; (3) estimated budgets (as applicable to the specific procurement) for design, construction, operation and maintenance. The Design Requirements may, but need not, include drawings and other documents illustrating the scale and relationship of the features, functions and characteristics of the project.

EMPLOYEE means an individual drawing a salary or wages from the City whether elected or not. Any noncompensated individual performing personal services for the City or any department agency, commission, council, board, or any other entity established by the executive or legislative branch of the City. Noncompensated individuals, serving as elected City officials or serving on a City Department Board, are also considered employees.

FINANCE OFFICER is the Finance Director of the City of Manchester

GRATUITY means a payment, loan, subscription, advance, deposit of money, service, or gift, presented or promised.

INDEPENDENT PEER REVIEWER SERVICES are additional Architectural and Engineering Services provided to review design build proposals. The function of this review is to provide an independent professional peer review to confirm that the key elements of the professional engineering and architectural designs provided by the contractors are in conformance with the applicable standard of care.

INFRASTRUCTURE FACILITY means a building; structure; or networks of building, structures, pipes, controls, and equipment that provide transportation, utilities, public education, or public safety services.

INVITATION FOR BIDS means all documents, whether attached or incorporated by reference, which are used for soliciting bids according to the City's procurement policies and procedures.

MAY. The word "may" shall be construed as being permissive.

MULTI-STEP SEALED BIDDING means a two-phase competitive process. The first phase consists of a technical phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the City. The second phase consists of a firm and final bid from those bidders whose technical offers were deemed acceptable by the City.

PROCUREMENT means buying, purchasing, renting, leasing or otherwise acquiring any materials, supplies, professional services and construction services. It also includes the description of requirements, selection and solicitation of sources, preparation and award of contract and all phases of contract administration.

PROFESSIONAL SERVICES means those services requiring special knowledge, education or skill and where the qualifications of persons rendering the services and the experience of the firm are of primary importance. Professional services shall include, but not be limited to, appraisers, attorneys, architects, engineers, surveyors, accountants, psychologists, physicians and other health care providers.

PROPOSAL DEVELOPMENT DOCUMENTS means drawings and other design related documents that are sufficient to fix and describe the size and character of an infrastructure facility as to architectural, structural, mechanical and electrical systems, materials, and such other elements as may be appropriate to the applicable project delivery method.

PURCHASING AGENCY is the City department making the proposed procurement.

PURCHASING AGENCY DIRECTOR OR DIRECTOR is the department head in charge of the City department making the proposed procurement acting either directly or through authorized representatives.

REQUEST FOR PROPOSALS means all documents, whether attached or incorporated by reference, which are used for soliciting proposals according to the City's procurement policies and procedures.

RESPONSIBLE BIDDER means a person or firm who submits a bid or proposal that conforms in all material respects to the invitation for bid or request for proposals and who has the financial capabilities and expertise to perform the contract requirements and the integrity and reliability that will assure good faith performance.

SERVICE means the furnishing of labor, time or effort by a contractor that does not involve the delivery of a specific end product other than required reports and performance. Service does not include employment agreements or collective bargaining agreements.

SHALL. The word "shall" is construed as being mandatory.

SOLICITATION means an invitation for bids, a request for technical offers, proposals, quotations or any other invitation or request by which the City invites a person to participate in a procurement action.

SPECIFICATION means any description of the physical or functional characteristics of materials, supplies, services or construction requirements. It may also include a

description of any requirement for inspecting, testing, preparing materials, supplies services or construction projects for delivery.

§39.04 DEPARTMENT PURCHASING RESPONSIBILITY.

Department Heads and City officers shall be responsible for making purchases from funds appropriated to their respective departments. The Highway Department shall be responsible for coordinating and overseeing the purchases of motor vehicles by City departments. See Section 39.60, Specialized Procurement Actions for procurements exclusively delegated to a purchasing agency.

§39.05 GENERAL PROCUREMENT AND AWARD PROVISIONS.

(A) **Prohibition Against Subdivision.** No procurement action shall be subdivided to avoid the requirements of this procurement code.

(B) **Bulk Purchases.** Whenever feasible, procurements shall be done in bulk to take full advantage of discounts. Purchasing agencies shall be responsible for anticipating their needs in a timely fashion in order to consolidate and expedite procurement of the same type of items. A lead purchasing agency shall be identified for procurement of commodities or services that are most common to their department. The lead purchasing agency shall accomplish the bulk citywide procurement action based on requirements identified by other departments. Capital Outlay requirements shall be planned and scheduled for periodic bulk procurement actions based on approved budget quantities.

(C) **Awards.** Contracts for the procurement of supplies, materials and construction shall be awarded to the lowest responsible bidder unless otherwise provided for in the bidding documents or in the Procurement Code. The basis of award shall always be defined in the bidding documents. Among other factors that may be considered in determining lowest responsible bidders are the following:

- (1) **Capability.** The ability and skill of the bidder to perform the contract.
- (2) **Timeliness.** Whether the bidder can perform the contract or furnish the supplies promptly, in accordance with plans and specifications, or within the time specified, without delay or interference.
- (3) **Previous Performance.** The character, integrity, reputation, judgment, experience and efficiency of the bidder.
- (4) **Quality.** The quality of supplies or performance on previous purchases or contracts, including known quality based on previous use, and the quality, availability and adaptability of the suppliers or contractual services to the particular use.
- (5) **Legal Compliance.** Previous and existing compliance by the bidder with laws and ordinances relating to the contract.

(6) **Conditions.** The number and scope of conditions attached to the bid by the bidder.

(D) **Award to Other Than Low Dollar Bidder.** Award to other than the low bidder is not allowed unless the bidder is not responsible or unless the award formula specifically allowed for other items to be taken into account to decide who is the lowest responsible bidder. When it appears appropriate not to make an award to the lowest dollar bidder, the purchasing agency Director shall prepare a written statement of the reasons for the project files.

(E) **Multi-Term Contracts.** Purchase orders or written agreements or contracts may be awarded for a maximum of five years in one-year increments. Multi-term contracts shall contain provisions for cancellation by the City in the event funds are not appropriated for the continuance of the contract. Any yearly increases in unit prices/rates shall be tied to an established CPI with a maximum yearly cap.

Multi-year Contracts without a “cancellation by the City” provision or contract committing future unappropriated funds or a contract without a set maximum yearly adjustment must be approved by the Board of Mayor and Aldermen. Multi year contracts that have been totally funded do not have to conform to this section.

The Airport Director or his designee is authorized by the Board of Mayor and Aldermen to enter into multi-year agreements which do not conform to this Section when, in the opinion of the Airport Director, situations arise that require immediate commitment or approval of agreements.

(F) **Late Bids or Proposals.** A bid, proposal, modification or withdrawal is late if it is received at the location designated in the Invitation for Bids or Request for Proposals, after the time and date set in the solicitation documents. Late bids or proposals shall be rejected.

(G) **Mistakes In Bids.** A bidder may correct mistakes discovered before the time and date set for the opening of bids based on procedures in the solicitation documents. After a bid is opened, mistakes based on an error in judgment shall not be corrected or withdrawn, unless it is obvious to the City that an egregious error was made. Minor or administrative mistakes may be waived by the purchasing agency director.

(H) **Cancellation of Solicitations.** An invitation for bids, a request for proposals, or other formal solicitations may be cancelled or rejected in whole or in part if deemed advantageous to the City.

(I) **Pre-Bid Specifications.** All specifications shall be written to promote overall economy for the purposes intended and encourage competition in satisfying the

City's needs and shall not be unduly restrictive. General performance specifications may be used in a Request for Proposals and Multi-step procurements when it is not desirable or feasible to prepare detailed specifications.

(J) **Cost or Pricing Data.** The submission of current cost or pricing data may be required in situations where analysis of the proposed price is essential to determine that the price is reasonable and fair. A contractor shall, when requested, submit current cost or pricing data and shall certify that the cost or pricing data submitted is accurate, complete and current as of a mutually determined specified date.

(K) **Change Orders.** Change orders to contracts may be executed according to change order clauses provided for in the original contract provided the change order does not materially change the scope of the original procurement.

(L) **Pre-Bid or Pre-Proposal Conferences.** A pre-bid or pre-proposal conference may be conducted within a reasonable time before bid opening or receipt of proposals. Pre-bid or pre-proposal conferences may be mandatory. If mandatory, only those bidders attending the mandatory pre-bid conference, shall be allowed to participate in the bid or proposal. Any changes to the solicitation documents shall be provided to all eligible bidders.

(M) **Prequalification.** The purchasing agency may require prequalification of prospective bidders for the procurement of supplies, materials, services and construction if the procurement is less than \$250,000. If the procurement is over \$250,000 the purchasing agency shall conform to Section 39.30 of this procurement code. Bidders have a continuing duty to provide the purchasing agency director with information on any material changes affecting the basis of prequalification.

(N) **Bid or Performance Bonds.** The purchasing agency may require the use of bid or performance bonds or other securities for the procurement of supplies, materials, services or for construction, in order to guarantee satisfactory completion of the procurement. However, any procurements over \$150,000 shall require a bid and performance bond or other security satisfactory to the Purchasing Agency after consulting with the Finance Officer and the City Solicitor. Bonds required by statute will not be waived. Any such bonding or security requirements shall be set forth in the solicitation. Failure of the bidder to comply with the security requirements in the solicitation may result in the rejection of the bid or proposal.

(O) **Right to Inspect.** The City may, at reasonable times, inspect the place of business of a contractor or any subcontractor that is related to the performance of any contract awarded or to be awarded by the City.

(P) **Right to Audit.** The City may, at reasonable times and places, audit the books and records of any contractor who submits cost or pricing data required by solicitations. If the City determines that there may be a need to audit a procurement, the contract agreement shall define these rights and who will assume the cost of the audit.

(Q) **City Procurement Records.** All determinations and other written records pertaining to the solicitation, award or performance of a contract shall be maintained for the City in a contract file by the purchasing agency. All procurement records shall be retained and disposed of by the City according to the records retention guidelines, Internal Revenue requirements and schedules of the City.

§39.10 AUTHORITY TO AWARD AND AVAILABILITY OF FUNDS.

(A) **Authority to Award.** All procurement actions made based on approved department budgets and authorized CIP allocations shall be awarded by the purchasing agency having delegated authority provided by this Procurement Code. Procurement actions not authorized to a department or multi-year contracts without a “cancellation by the City” provision requiring future City appropriations, shall be approved by the Board of Mayor and Aldermen.

(B) **Availability of Funds.** Unencumbered funds to cover the entire purchase order or contract must be available in the appropriate budget of the purchasing agency prior to award of any purchase order or contract. Purchase orders and contracts are subject to the annual appropriation of funds. Multi-term purchase orders or contracts shall have adequate unencumbered funds available for the first year except as noted.

§39.20 SOURCE SELECTION.

(A) **Small Purchases.** Small purchases are considered informal procurement actions. Procurement requirements shall not be artificially divided so as to constitute a small purchase.

(1) Total price is \$10,000 or less, it shall be made after adequate inquiry based on the director or his designee’s knowledge of a reasonable price and satisfactory quality.

(2) Total price more than \$10,000 to \$25,000. When the total price is greater than \$10,000, and not more than \$25,000 purchases shall be made using documented oral or written price or rate quotations from an adequate number of suppliers. If available, a minimum of three quotations from qualified suppliers shall be obtained. Such price and rate quotations, the date of such quotations and the names of suppliers shall be documented.

(B) **Competitive Sealed Bidding.** Competitive sealed bidding is considered a formal procurement action. Except as provided in this Procurement Code, all purchases in excess of \$25,000 shall be made by competitive sealed bidding. Purchase orders and contracts shall be awarded to the lowest responsible bidder except as provided for in this code.

Competitive sealed bidding procedures shall at a minimum, incorporate the following:

(1) Formal bid specifications that at a minimum include the general terms and conditions of the proposed purchase, requirements of the bidder, form of contract, the forms for submission of bids and the basis of award.

(2) Product or service specifications that accurately describe the product or service required in such a manner as to not preclude competition. If specific manufacturer's names or models are used to describe the product or service, a minimum of two manufacturers' names should be used if available. There shall be a provision for approval of an equal product or service. Also, see Section 39.50 (5).

(3) Adequate public notice of a minimum of (5) business days, prior to the date established for the opening of bids. Such notice shall include as a minimum, publication in a newspaper of general distribution.

(4) Sealed bids shall be opened publicly at the time and place designated in the Invitation for Bids. A tabulation of all bids received shall be available for public inspection within a reasonable period of time. Departments shall determine an adequate amount of time.

(5) The purchasing agency may negotiate with the two low bidders in order to reduce the bid to fall within available funds and/or to obtain a lower bid amount, provided that the original intent of the procurement is not materially changed. The right to negotiate a lower total bid must be a condition of the bidding documents.

(6) The award of bids shall be formalized through the execution of a purchase order or written contractual agreement.

(7) The purchasing agency may reject any or all bids or parts thereof when such rejection has been determined to be in the City's best interest.

(C) **Multi-Step Sealed Bidding.** When it is considered impractical to readily prepare a detailed specification to support an award based on price, a two-step bid process may be used. The first step is a request for proposals, based on a general or performance specification, requesting the submission of unpriced technical proposals. The second step is an invitation for firm and final priced bids to those bidders whose proposals have been determined to be technically acceptable under the criteria set forth in the first step.

The multi-step sealed bidding method may be used if the purchasing agency determines that:

- (1) Available specifications or purchase descriptions are not sufficiently complete to permit full competition without technical evaluations and discussions to ensure mutual understanding between each bidder and the City.
- (2) Definite criteria exist for evaluation of technical offers.
- (3) More than one technically qualified source is expected to be available.
- (4) A fixed price contract will be used.

The Invitation to Bid must provide notice that a multi-step process is being used. The notice should explain the multi-step process and that only those bidders providing technically acceptable proposals, will be allowed to participate in submitting a firm and final bid price.

Adequate public notice of a minimum of 10 working days prior to the date established for the opening of bids shall be provided. Such notice shall include as a minimum publication in a newspaper of general circulation.

Award shall be made to the lowest dollar responsible bidder.

(D) Competitive Sealed Proposals. When competitive sealed bidding is not practical or advantageous to the City, the purchasing agency director, may authorize the use of competitive sealed proposals and negotiations as the procurement method.

In determining whether competitive sealed bidding is practical or advantageous to the City, the purchasing agency director, shall consider the following factors:

- (1) Whether the cost to develop formal technical bid specifications sufficient to insure open competitive bids, would make the total cost of the procurement excessive.
- (2) Whether the proposed purchase is to be accompanied by land, development, or other related economic transactions, therefore the bid price may not accurately reflect the total economic effect of the purchase.
- (3) Whether the product or service is specialized or custom produced, and the development of terms, conditions, specifications, and other provisions specifically defining the procurement requires interaction with prospective suppliers.
- (4) Where no responsible bidder has submitted a bid in response to the invitation.

If the purchasing agency director determines that competitive sealed bidding is not practical and that competitive sealed proposals and negotiations should be used, the purchasing agency shall:

- (1) Develop terms, conditions and general or performance specifications for the product or service required.

(2) In such cases where the award is not necessarily to be based on the lowest negotiated price, the request for proposals shall indicate and define the relative importance of price and other significant evaluation factors.

(3) Provide adequate public notice as in the case of competitive sealed bids.

(4) Sealed proposals shall be received at the time and place designated in request for proposals. A proposal received after the closing date and time set for the receipt of proposals, is late and shall not be considered. No proposals shall be handled so as to permit disclosure of the contents of any proposal to competing offerers during the process of negotiation. Submission of the proposal shall be conditioned on not disclosing the proposals content until the completion of negotiations and award of a contract. Proposals shall be opened in the presence of witnesses. Proposals and modifications shall be shown only to City personnel having a legitimate interest in them or persons assisting in the City evaluation.

After the opening and evaluation of competitive sealed proposals, written or verbal negotiations may be conducted with one or more parties who have submitted proposals. Such negotiations are designed to achieve terms and conditions most favorable to the City. Negotiations need not be conducted where time constraints preclude additional negotiations or where the purchasing agency certifies that acceptance of an initial offer without discussion, would result in fair and equitable prices. The request for proposals shall clearly define the City's rights pertaining to negotiations.

(5) Award shall be made to the proposer whose proposal has been determined to be responsive and most advantageous to the City. The contract file shall contain, in writing, the basis on which award is made.

§39.30

PREQUALIFICATION OF BIDDERS.

(A) Prequalification of potential bidders shall be accomplished for all contracts for construction, reconstruction, alteration and repair or refurbishing of real property with an estimated project cost in excess of \$250,000. Prequalification of contractors based on the type of work and dollar limits may be done annually. The invitations for bids shall be issued only to firms that have, in the City's sole determination, been prequalified.

(B) The purchasing agency involved shall establish rules and regulations that govern prequalification of bidders. The rules and regulations shall take into consideration:

(1) The ability, capacity, and skill of the bidder to perform the contract or provide the service required.

(2) Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference.

(3) The character, integrity, reputation, judgment, experience and efficiency of the bidder.

- (4) The quality of performance on previous contracts.
- (5) The previous and existing compliance by the bidder with laws and ordinances relating to the contract.
- (6) The sufficiency of financial resources and ability of the bidder to perform the contract.
- (7) The quality, availability, and adaptability of the supplies or contractual services to the particular use required.
- (8) The ability of the bidder to provide future maintenance and service.
- (9) The number and scope of bidder conditions attached to the bid.
- (10) The amount of total direct and indirect costs that would be incurred by the City because of the bid.
- (11) The ability of the bidder to meet the City's bonding and insurance requirements.

(C) These rules and regulations may also include other special considerations as authorized by law.

§39.40 PROFESSIONAL SERVICES.

The procurement of accounting, architectural, auditing, engineering, financial, legal, data processing, medical services and independent consultant services for personnel, insurance and actuarial planning and management, human resource and public relations, may be accomplished using the following procedures:

(A) **Professional Services \$25,000 or Less** – The purchasing agency may solicit one or more proposals for the procurement of professional services at a fee which is deemed fair and reasonable. The purchasing agency will document the basis of the procurement in the project file. In no case shall more than three awards be made to the same vendor in any 12 months without the prior written notification to the Finance Officer.

(B) **Professional Services greater than \$25,000** – A formal Request for Proposal process shall be used. The purchasing agency shall develop a Request for Proposals to include terms, conditions, scope of service, desired results, end product and consultant qualification. Selection criteria and the method of determining a final fee by the City will be included in the Request for Proposals. This process can be accomplished in a Request for Qualification Phase and a Request for Proposals Phase. The Request for Proposal process shall include the following:

(1) Adequate public notice of a minimum of ten business days prior to the date established for the receipt of qualifications and/or proposals shall be provided. Such notice shall include as a minimum, publication in a newspaper of general circulation.

(2) A minimum of three proposals, if available, shall be evaluated and selection made based on demonstrated competence, qualifications and project approach for the services required. Where applicable to a particular project, factors such as the following shall be used in tentatively selecting a firm:

- (a) Specific experience with similar projects.
- (b) Specific experience with earlier phases of the same project.
- (c) Background and experience of staff members who would be assigned to the job.
- (d) Availability.
- (e) Locality of firm.
- (f) Ability to communicate ideas.
- (g) Ability to supply all of the major disciplines necessary to perform the work.
- (h) Qualifications of subcontractors/subconsultants.
- (i) Conceptual design/project approach.
- (j) Accuracy of the firm in estimating time and cost requirements.
- (k) Responsiveness to requirements contained in the RFP.
- (l) Financial capabilities of the firm.

(3) The purchasing agency may interview one or more of the proposers in order to clearly understand the proposers qualifications and the submitted proposal.

(4) Selection criteria may be established in order to determine the best overall proposal. The criteria may incorporate a weighting system for the proposals received.

(5) Fees for professional services are an important consideration, which must not be taken lightly. However, selection shall be ultimately based on demonstrated competence, qualifications and project approach at a reasonable fee. Depending on the complexity of the project, the purchasing agency may utilize one of the following procedures to determine a fee:

- (a) The fee can be requested as part of the requested proposal and considered in tentatively selecting a firm.
- (b) A multi-step sealed procurement can be requested where the sealed fee is not opened until a proposer has been tentatively selected.
- (c) A fee can be negotiated after a proposer has been selected and a final scope of services has been determined.

(6) If necessary, the purchasing agency may negotiate with one or more responsive firms in order to make a tentative selection. Once a tentative selection has been made, a final scope of services and fee shall be negotiated with the selected firm in order to enter into a contract deemed to be in the best interest of the City.

(7) On award, all contracts for professional services shall be formalized in a written agreement signed by the applicant and the purchasing agency.

§39.50 NEGOTIATED PROCUREMENT ACTIONS.

(A) Purchase orders or written agreements shall be awarded without benefit of formal or informal bidding in one or more of the following cases. Negotiation methods may be used to award the contracts.

(1) Purchases required in the event of an emergency that necessitates the immediate purchase of goods or services.

(2) Purchases where the cost of the service is fixed by law.

(3) Purchases that can be procured through cooperative intergovernmental purchase agreements with other government jurisdictions.

(4) Sole source procurements, where the proposed purchase is manufactured by only one company.

(5) Purchases from a sole manufacturer, where it is determined to be more efficient and economical to reduce costs of maintenance of additional repair parts, suppliers or services.

(6) Purchases that have been preceded by competitive sealed bidding, where no responsive bidder has responded.

(7) Purchases under extensions of contracts when the same or lower price is extended for another year or part of a year. The maximum extensions shall not exceed five years without written notification to the Finance Officer.

(8) Purchases under intergovernmental agreements or contracts that require use of procurement procedures inconsistent with the provisions of this section.

(9) City share contracts that include contracts with developers for the construction of public improvements whereby the City shares in the cost of construction.

(10) Used, discontinued or otherwise unique equipment or commodities that become available (such as at an auction) or are offered only for a limited time and may be acquired below the cost of similar new items.

(11) Service on existing equipment when it is advantageous to the City to obtain parts, repair or service on existing equipment from a factory authorized dealer or distributor.

(12) Perishable supplies that cannot be purchased by ordinary procurement methods because of imminent spoilage or decay.

(13) Standardized parts, modules or accessories that will minimize excessive inventory or maintain compatibility with existing furnishings or installations.

(14) Open ended purchase orders or written agreements with local suppliers in order to provide for emergencies, reduced down time of equipment or projects, and for supplies and materials not stored in a City warehouse.

§39.60**SPECIALIZED PROCUREMENT ACTIONS.**

(A) The procurement of the following goods and services shall be made exclusively by the delegated purchasing agency. Exceptions may only be granted with a written waiver from the Board of Mayor and Aldermen:

- (1) Insurance and actuarial services by the Risk Manager and/or the Finance Officer.
- (2) Legal services by the City Solicitor.
- (3) Information technology services, hardware, software and network capable devices including telephones by the Information Services Director-
- (4) Accounting and banking services by the Finance Director.
- (5) Auditing services by the Auditor.
- (6) Other purchases from nondepartmental appropriations shall be made by the Finance Officer unless otherwise indicated in the budget.

(B) When purchasing insurance, a prequalification process may be used inviting agents and brokers to submit a questionnaire regarding their experience and qualifications. Only firms that, in the City's sole determination qualified, shall be selected for the bid process. Each firm selected to bid shall submit common specifications to their assigned insurance carriers. Awards for such purchases shall be made to the lowest responsible bidder. The City may retain the agency, and/or carrier receiving the contract for a period not to exceed three (3) years, reasonable premium increases notwithstanding, before any renewal of this bidding procedure.

(C) In any award, the City may take into consideration any costs of conversion involved.

§39.70**COOPERATIVE PROCUREMENT.**

The purchasing agency shall have authority to join with any other municipal, state or federal governmental agency in cooperative procurement actions.

§39.80**SPECIAL PROCUREMENT METHODS.**

The Purchasing Agency proposing to utilize this section of the Procurement Code must detail in the project file why utilizing this section of the Code is in the best interest of the City.

(A) **PROCUREMENT METHODS.**

(1) **Design-Build** is a project delivery method in which the procuring agency enters into a single contract for design and construction of an infrastructure facility. Procurement of Design-Build services shall generally follow procedures outlined in the “Design Build Manual of Practice”, as published by the “Design Build Institute of America”.

(2) **Design-Bid-Build** means a project delivery method in which the purchasing agency sequentially awards separate contracts, the first for Architectural and Engineering Services to design the project and the second for construction of the project according to the design.

(3) **Operation and Maintenance** is a project delivery method whereby the procuring agency enters into a single contract for the routine operation, routine repair, and routine maintenance of an infrastructure facility. Operation and Maintenance services shall be procured from prequalified contractors by utilizing competitive sealed proposals submitted in response to a Request for Proposals, which has established the supplies and services required to maintain and operate infrastructure facilities.

(4) **Design-Build-Operate-Maintain** is a project delivery method in which the procuring agency enters into a single contract for design, construction, maintenance, and operation of an infrastructure facility over a contractually defined period. All or a portion of the funds required to pay for the services provided by the contractor during the contract period are either appropriated by the City prior to award of the contract or secured by the City through fee or user charges. Procurement of Design-Build-Operate-Maintain services shall generally follow procedures outlined in the “Design Build Manual of Practice”, as published by the “Design Build Institute of America”.

(5) **Design-Build-Finance-Operate** is a project delivery method in which the procuring agency enters into a single contract for design, construction, finance, maintenance, and operation of an infrastructure facility over a contractually defined period. No funds are appropriated to pay for any part of the services provided by the contractor during the contract period. Procurement of Design-Build Finance Operate Maintain services shall generally follow procedures outlined in the “Design Build Manual of Practice”, as published by the “Design Build Institute of America”. A preliminary determination by the City should have been made that project revenues are sufficient, over the length of the proposed contract, to cover design, construction, finance, and operations.

(6) **Design-Build-Finance-Operate-Maintain** means a project delivery method in which the purchasing agency enters into a single contract for design, construction, finance, maintenance, and operation of an infrastructure facility over a contractually defined period. No City funds are appropriated to pay for any part of the services provided by the contractor during the contract period. This deliver method does not preclude the City from providing financing as long as the City ultimately is reimbursed all of its costs over the life of the contract agreement.

(7) **Construction Management Services** is a project delivery process by which a qualified third party provides construction leadership with a defined scope throughout various phases of the project (e.g. planning, design and construction). The Construction Manager would typically provide advice and the construction leadership, contract management, direction, supervision, coordination and control of the work during the construction phase. The Construction Manager would strive to integrate the expertise of the design professional with the contractors knowledge of project constructability in order to obtain a cost effective end result. The Construction Manager could hold the dual role of design professional and contractor. The procurement of Construction Management Services shall generally follow procedures outlined by the Association of General Contractors "Owners Guidelines for Selection of a Construction Manager".

(8) **Other Special Project Delivery Methods** or combinations of the above may be utilized provided that the purchasing agency can demonstrate that the delivery method meets the intent of this procurement code and receives the approval of the Board of Mayor and Aldermen.

(C) **EVALUATION FACTORS.** The Request for Proposals shall state all evaluation factors and subfactors that will be separately rated and the weights to be given to each factor and subfactor in the evaluation. Evaluation factors may consist of the following:

- (1) Demonstrated compliance with design requirements,
- (2) Qualifications and experience,
- (3) Financial capacity,
- (4) Project schedule,
- (5) Price (or life-cycle price for Design-Build-Operate-Maintain and Design-Build-Finance-Operate-Maintain procurements), and
- (6) Other evaluation factors if any.

(D) The Request for Proposals may require each offerer to identify an Independent Design Peer Reviewer whose competence and qualifications to provide such services shall be an additional evaluation factor in the award of the contract. The City reserves the right to choose its' own Independent Design Peer Reviewer.

§39.90 PROHIBITIONS.

(A) **Conflict of Interest.** No employee, officer or agent of the City shall participate in the award or administration of a contract in which they or any member of their immediate family has an interest. No employee, officer or agent shall participate in the award or administration of a contract with any person, firm, partnership or corporation in which they or any member of their immediate family is an officer or employee or is about to become an officer or employee.

(B) **Pecuniary Benefit.** No employee, officer or agent of the City who is participating or is about to participate in the award or administration of a contract, shall either solicit or accept any kickback, gratuity, contingent payment or other pecuniary benefit from any firm, person, partnership or corporation involved in such contract. For the purpose of this section, PECUNIARY BENEFIT means any advantage in the form of money, property, commercial interest, travel, offer of employment or anything else, the primary significance of which is economic gain.

(C) **Standards of Conduct.** Every employee, officer or agent of the City is expressly prohibited from knowingly participating in the following:

- (1) Underestimating or exaggerating requirements to certain prospective bidders for the purpose of influencing bids.
- (2) Misrepresenting competitor's prices, quality or service to obtain concessions.

(D) **Savings Provision.** Nothing in this subchapter is intended to invalidate or in anyway limit the term of any contract or special service agreement lawfully made prior to the effective date of this subchapter.